

United States District Court, Northern District of Illinois

Name of Assigned Judge or Magistrate Judge	Nan R. Nolan	Sitting Judge if Other than Assigned Judge	
CASE NUMBER	10 C 5711	DATE	2/17/2012
CASE TITLE	Kleen Products LLC vs. Packaging Corp. of America		

DOCKET ENTRY TEXT

For the reasons stated below, Defendants' Motion *in Limine* to Exclude: (1) Testimony on Issues Beyond the Scope of February 21, 2012 Hearing and (2) Undisclosed Expert [Doc. 295] is **GRANTED IN PART and RESERVED IN PART**.

■ [For further details see text below.]

Notices mailed by Judicial staff.

STATEMENT

A. Motion in Limine No. 1

In Defendants' Motion *in Limine* No. 1, they seek to prohibit and exclude Plaintiffs' proposed evidence concerning purported forensic, technical issues or flaws with individual Defendants' ESI collection or production. (Mot. 1, 2–5.) Defendants contend that such issues have never been raised or identified either to the Court or the parties. (*Id.*)

The Court disagrees. For example, in their February 6, 2012 memorandum, Plaintiffs complain that Defendants have self-selected their custodians with no input from Plaintiffs. (Mem. 3, 12.) Plaintiffs also assert that Defendant Georgia Pacific “has carried out and propose a process for Boolean searching that is riddled with errors and poor practices, including invalid sampling, bias in the assessment of documents, ineffective use of analytical tools, confused and inappropriate reporting of purportedly statistical results.” (*Id.* 10.) Nevertheless, the Court finds that this issue can be effectively addressed at the hearing by making definitive rulings on specific testimony by the expert witnesses. Accordingly, Defendant's Motion *in Limine* No. 1 is **reserved**.

B. Motion in Limine No. 2

In Defendants' Motion *in Limine* No. 2, they move to exclude any testimony from Dr. Carol Tenny. (Mot. 1–2, 5–6.) Defendants contend that Plaintiffs did not identify Dr. Tenny as a potential witness until their February 13, 2012 Reply and did not disclose her role in this case or the subject matter of her anticipated testimony, and did not provide any background or other material. (*Id.* 2.)

At the January 17, 2012 status, the Court ordered the parties to file memoranda on February 6, 2012, which shall include the identification of all experts expected to testify at the hearing along with the subject matter of their testimony. In their memorandum, Plaintiffs identified their experts as Dr. David Lewis and

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Timothy Hanners. (Mem. 3 n.4, 13.) Accordingly, testimony by Dr. Tenny is excluded. Defendants' Motion *in Limine* No. 2 is **granted**.